

DOLL AMIR & ELEY LLP

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Attorneys for Defendant

CAPITAL ONE BANK (USA), N.A.

(erroneously named as

CAPITAL ONE, N.A.)

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Case No.

ROBERT H. O'CONNOR,

Plaintiff,

v.

CAPITAL ONE, N.A.,

Defendant.

**NOTICE OF REMOVAL OF
ACTION TO THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT OF
CALIFORNIA UNDER 28 U.S.C. §
1331 (FEDERAL QUESTION
JURISDICTION), 28 U.S.C. § 1441(a)
(REMOVAL JURISDICTION), 28
U.S.C. § 1446(b) (FEDERAL
QUESTION REMOVAL)**

*(Filed concurrently with: (1) Civil Cover
Sheet; and (2) Notice of Interested
Parties)*

[San Francisco County Superior Court
Case No. CSM-14-845890]

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE THAT defendant Capital One Bank (USA), N.A. (erroneously named as “Capital One, N.A.”) (“Capital One”) hereby invokes this Court’s jurisdiction under the provisions of 28 U.S.C. § 1331 and 28 U.S.C. § 1441(a), and removes this action from state court to federal court pursuant to 28 U.S.C. § 1446(b).

A. JURISDICTION

1. Capital One specifically alleges that this Court has federal question jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 & 1441(a) because plaintiff Robert H. O’Connor (“Plaintiff”) alleges a claim arising under the Fair Debt Collection Practices Act (“FDCPA”), codified at 15 U.S.C. § 1692, *et seq.*, which is a law of the United States.

B. STATEMENT OF THE CASE

2. On January 8, 2014, Plaintiff filed a Complaint in the Superior Court of the State of California for the County of San Francisco, designated as Case Number CSM-14-845890 (the “Action”). Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings and orders served upon Capital One in this case is attached hereto as Exhibit A.

3. Plaintiff asserts a single claim in his Complaint against Capital One under the FDCPA.

C. BASIS FOR REMOVAL

4. This Court has jurisdiction over this Action pursuant to 28 U.S.C. § 1331 because Plaintiff brings a claim rooted in the FDCPA, which is a law of the United States. Therefore, adjudication of Plaintiff’s Complaint requires an analysis and construction of federal law. Thus, this Action is one which may be removed to this Court by Capital One pursuant to 28 U.S.C. §§ 1331 & 1441(a), because this Court

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1 would have had original jurisdiction founded on Plaintiff's claim arising under the
2 FDCPA.

3 **D. ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN**
4 **SATISFIED.**

5 5. Removal of this action is timely. Corporation Service Company (Capital
6 One's registered agent for service of process) received the Complaint on January 13,
7 2014 through certified mail. Therefore, this Notice of Removal, dated February 12,
8 2014, is "filed within thirty [30] days after receipt by the defendant . . . of a copy of
9 [the Complaint]" in accordance with the time period mandated by 28 U.S.C. §1446(b).

10 6. Capital One is the only named defendant in the action and, therefore, no
11 consent of additional parties is required.

12 7. Venue lies in the United States District Court for the Northern District of
13 California pursuant to 28 U.S.C. §1441(a) because the Action was filed in this
14 District.

15 8. As stated above, pursuant to 28 U.S.C. § 1446(a), a true and correct copy
16 of all process, pleadings and orders served upon Capital One in the Action are
17 attached hereto as Exhibit A.

18 9. Written notice of the filing of this Notice of Removal will be promptly
19 served upon Plaintiff. Capital One will also promptly file a copy of this Notice with
20 the Clerk of the Superior Court of California, County of San Francisco.

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1 **WHEREFORE** Capital One prays that the above Action now pending against
2 it in the Superior Court of the State of California, County of San Francisco, be
3 removed therefrom to this Court.

4
5 DATED: February 12, 2014

DOLL AMIR & ELEY LLP

6
7 By: /s/ Hunter R. Eley
8 Hunter R. Eley
9 Attorneys for Defendant
10 CAPITAL ONE BANK (USA), N.A.
11 (erroneously named as
12 CAPITAL ONE, N.A.)
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EXHIBIT A

SC-100**Plaintiff's Claim and ORDER
to Go to Small Claims Court****Notice to the person being sued:**

- You are the Defendant if your name is listed in ② on page 2 of this form. The person suing you is the Plaintiff, listed in ① on page 2.
- You and the Plaintiff must go to court on the trial date listed below. If you do not go to court, you may lose the case.
- If you lose, the court can order that your wages, money, or property be taken to pay this claim.
- Bring witnesses, receipts, and any evidence you need to prove your case.
- Read this form and all pages attached to understand the claim against you and to protect your rights.

Aviso al Demandado:

- Usted es el Demandado si su nombre figura en ② de la página 2 de este formulario. La persona que lo demanda es el Demandante, la que figura en ① de la página 2.
- Usted y el Demandante tienen que presentarse en la corte en la fecha del juicio indicada a continuación. Si no se presenta, puede perder el caso.
- Si pierde el caso la corte podría ordenar que le quiten de su sueldo, dinero u otros bienes para pagar este reclamo.
- Lleve testigos, recibos y cualquier otra prueba que necesite para probar su caso.
- Lea este formulario y todas las páginas adjuntas para entender la demanda en su contra y para proteger sus derechos.

Order to Go to Court**The people in ① and ② must go to court:** (Clerk fills out section below.)

Trial Date	Date	Time	Department	Name and address of court if different from above
1.	MAR 10 2014	1:30 pm	506	5th Floor
2.				
3.				
Date: JAN 08 2014			Clerk, by SHIRLEY WU, Deputy	

Instructions for the person suing:

- You are the Plaintiff. The person you are suing is the Defendant.
- *Before* you fill out this form, read Form SC-100-INFO, *Information for the Plaintiff*, to know your rights. Get SC-100-INFO at any courthouse or county law library, or go to: www.courts.ca.gov/smallclaims/forms.
- Fill out pages 2 and 3 of this form. Then make copies of **all** pages of this form. (Make 1 copy for each party named in this case and an extra copy for yourself.) Take or mail the original and these copies to the court clerk's office and pay the filing fee. The clerk will write the date of your trial in the box above.
- You must have someone at least 18—not you or anyone else listed in this case—give each Defendant a court-stamped copy of all 5 pages of this form and any pages this form tells you to attach. There are special rules for “serving,” or delivering, this form to public entities, associations, and some businesses. See Forms SC-104, SC-104B, and SC-104C.
- **Go to court on your trial date listed above.** Bring witnesses, receipts, and any evidence you need to prove your case.

Clerk stamps date here when form is filed.

ENDORSED
FILED
San Francisco County Superior Court

JAN 08 2014

CLERK OF THE COURT
BY: SHIRLEY WU
Deputy Clerk

Fill in court name and street address:

Superior Court of California, County of
400 McAllister St.
San Francisco, CA 94102

Clerk fills in case number and case name:

Case Number:
CSM-14-845890
Case Name:
O'Connor vs. Capital One

Case Number:

CSM-14-845890

Plaintiff (list names): Robert H. O'Connor

1 The Plaintiff (the person, business, or public entity that is suing) is:

Name: Robert H. O'Connor

Phone: (650) 342-7900

Street address: 67 Laken Lane
StreetPalm Desert Calif. 92211
City State ZipMailing address (if different): 3157 Baker St.
StreetSan Francisco Calif. 94123
City State Zip**If more than one Plaintiff, list next Plaintiff here:**

Name: _____

Phone: () _____

Street address: _____
Street

City State Zip

Mailing address (if different): _____
Street

City State Zip

☐ Check here if more than 2 Plaintiffs and attach Form SC-100A.☐ Check here if either Plaintiff listed above is doing business under a fictitious name. If so, attach Form SC-103.**2 The Defendant (the person, business, or public entity being sued) is:**

Name: Capital One, National Association

Phone: (800) 933-9100

Street address: 1680 Capital One Dr
StreetMcLean VA 22102
City State ZipMailing address (if different): 2710 Gateway Oaks Dr
StreetSacramento Calif. 95833
City State Zip**If more than one Defendant, list next Defendant here:**

Name: _____

Phone: () _____

Street address: _____
Street

City State Zip

Mailing address (if different): _____
Street

City State Zip

☐ Check here if more than 2 Defendants and attach Form SC-100A.☐ Check here if any Defendant is on active military duty, and write his or her name here: _____**3 The Plaintiff claims the Defendant owes \$ 1,000.00 . (Explain below):**a. Why does the Defendant owe the Plaintiff money? For Violation of Fair Debt Collection Practices Act (FDCPA).

b. When did this happen? (Date): _____

If no specific date, give the time period: Date started: January 1, 2013 Through: December 31, 2013

c. How did you calculate the money owed to you? (Do not include court costs or fees for service.) The Law States Each Violation is subject to a \$1,000.00 fine.

_____☐ Check here if you need more space. Attach one sheet of paper or Form MC-031 and write "SC-100, Item 3" at the top.

Case Number:

GSM-14-845890Plaintiff (list names): Robert H. O'Connor

- 4 You must ask the Defendant (in person, in writing, or by phone) to pay you before you sue. Have you done this?** ☐ Yes ☒ No

If no, explain why not: Defendant was sent letter regarding them being a debt collector, and failed to acknowledge that they were, so would likely not agree to be in violation.

- 5 Why are you filing your claim at this courthouse?**

This courthouse covers the area (check the one that applies):

- a. ☒ (1) Where the Defendant lives or does business. (4) Where a contract (written or spoken) was made, signed, performed, or broken by the Defendant or where the Defendant lived or did business when the Defendant made the contract.
- (2) Where the Plaintiff's property was damaged.
- (3) Where the Plaintiff was injured.
- b. ☐ Where the buyer or lessee signed the contract, lives now, or lived when the contract was made, if this claim is about an offer or contract for personal, family, or household goods, services, or loans. (Code Civ. Proc., § 395(b).)
- c. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, if this claim is about a retail installment contract (like a credit card). (Civil Code, § 1812.10.)
- d. ☐ Where the buyer signed the contract, lives now, or lived when the contract was made, or where the vehicle is permanently garaged, if this claim is about a vehicle finance sale. (Civil Code, § 2984.4.)
- e. ☐ Other (specify): _____

- 6 List the zip code of the place checked in 5 above (if you know):** 94123

- 7 Is your claim about an attorney-client fee dispute?** ☐ Yes ☒ No

If yes, and if you have had arbitration, fill out Form SC-101, attach it to this form, and check here: ☐

- 8 Are you suing a public entity?** ☐ Yes ☒ No

If yes, you must file a written claim with the entity first. ☐ A claim was filed on (date): _____

If the public entity denies your claim or does not answer within the time allowed by law, you can file this form.

- 9 Have you filed more than 12 other small claims within the last 12 months in California?**

☐ Yes ☒ No If yes, the filing fee for this case will be higher.

- 10 I understand that by filing a claim in small claims court, I have no right to appeal this claim.**

- 11 I have not filed, and understand that I cannot file, more than two small claims cases for more than \$2,500 in California during this calendar year.**

I declare, under penalty of perjury under California State law, that the information above and on any attachments to this form is true and correct.

Date: 1-8-14 Robert H. O'Connor

Plaintiff types or prints name here

Robert H. O'Connor
Plaintiff signs here

Date: _____

Second Plaintiff types or prints name here

Second Plaintiff signs here



Requests for Accommodations

Assistive listening systems, computer-assisted, real-time captioning, or sign language interpreter services are available if you ask at least 5 days before the trial. Contact the clerk's office for Form MC-410, Request for Accommodations by Persons With Disabilities and Response. (Civil Code, § 54.8.)



CSM-14-845890

SC-100**Information for the Defendant (the person being sued)**

"Small claims court" is a special court where claims for \$5,000 or less are decided. A "natural person" (not a business or public entity) may generally claim up to \$10,000, including a sole proprietor. (*See below for exceptions.) The process is quick and cheap. The rules are simple and informal.

You are the Defendant - the person being sued. The person who is suing you is the Plaintiff.

Do I need a lawyer?

You may talk to a lawyer before or after the case. But you *may not* have a lawyer represent you in court (unless this is an appeal from a small claims case).

How do I get ready for court?

You don't have to file any papers before your trial, unless you think this is the wrong court for your case. But bring to your trial any witnesses, receipts, and evidence that supports your case. And read "Be Prepared for Your Trial" at www.courts.ca.gov/smallclaims/prepare.

What if I need an accommodation?

If you have a disability or are hearing impaired, fill out Form MC-410, *Request for Accommodations*. Give the form to your court clerk or the ADA/Access Coordinator.

What if I don't speak English well?

Bring an adult who is not a witness to interpret for you, or ask the court clerk for an interpreter at least five days before your court date. A court-provided interpreter may not be available or there may be a fee for using a court interpreter unless you qualify for a fee waiver. You may ask the court for a list of interpreters and also the *Application for Waiver of Court Fees and Costs* (form FW-001).

Where can I get the court forms I need?

Go to any courthouse or your county law library, or print forms at: www.courts.ca.gov/smallclaims/forms.

What happens at the trial?

The judge will listen to both sides. The judge may make a decision at your trial or mail the decision to you later.

What if I lose the case?

If you lose, you can appeal. You'll have to pay a fee. (Plaintiffs cannot appeal their own claims.)

- If you were at the trial, file Form SC-140, *Notice of Appeal*. You must file within 30 days after the judge's decision.
- If you were *not* at the trial, fill out and file Form SC-135, *Notice of Motion to Vacate Judgment and Declaration*, to ask the judge to cancel the judgment (decision). If the judge does not give you a new trial, you have 10 days to appeal the decision. File Form SC-140.

For more information on appeals, see: www.courts.ca.gov/smallclaims/appeals.

Do I have options?

Yes. If you are being sued, you can:

- **Settle your case before the trial.** If you and the Plaintiff agree on how to settle the case, both of you must notify the court. Ask the Small Claims Advisor for help.
- **Prove this is the wrong court.** Send a letter to the court *before* your trial, explaining why you think this is the wrong court. Ask the court to dismiss the claim. You must serve (give) a copy of your letter (by mail or in person) to all parties. (Your letter to the court must say you have done this.)
- **Go to the trial and try to win your case.** Bring witnesses, receipts, and any evidence you need to prove your case. To make sure the witnesses go to the trial, fill out Form SC-107, and the clerk will subpoena (order) them to go.
- **Sue the person who is suing you.** File Form SC-120, *Defendant's Claim*. There are strict filing deadlines you must follow.
- **Agree with the Plaintiff's claim and pay the money.** Or, if you can't pay the money now, go to your trial and say you want to make payments.
- **Let the case "default."** If you don't settle and do not go to the trial (default), the judge may give the Plaintiff what he or she is asking for plus court costs. If this happens, the Plaintiff can legally take your money, wages, and property to pay the judgment.

What if I need more time?

You can change the trial date if:

- You cannot go to court on the scheduled date (you will have to pay a fee to postpone the trial) *or*
- You did not get served (receive this order to go to court) at least 15 days before the trial (or 20 days if you live outside the county) *or*
- You need more time to get an interpreter. One postponement is allowed, and you will not have to pay a fee to delay the trial.

Ask the Small Claims Clerk about the rules and fees for postponing a trial. Or fill out Form SC-150 (or write a letter) and mail it to the court *and* to all other people listed on your court papers before the deadline. Enclose a check for your court fees, unless a fee waiver was granted.

**Need help?**

Your county's Small Claims Advisor can help for free.

Or go to www.courts.ca.gov/smallclaims/advisor.

*Exceptions: Different limits apply in an action against a defendant who is a guarantor. (See Code Civ. Proc. § 116.220(c).) In an action brought by a natural person for damages for bodily injuries resulting from an automobile accident, a \$7,500 limit applies if a defendant is covered by an automobile insurance policy that includes a duty to defend. (See Code Civ. Proc. § 116.221.)

SC-100**Información para el demandado (la persona demandada)**

La "**Corte de reclamos menores**" es una corte especial donde se deciden casos por \$5,000 ó menos. Una "persona natural" (que no sea un negocio ni una entidad pública), que incluye un dueño único, generalmente puede reclamar hasta \$10,000. (*Vea abajo para las excepciones.) El proceso es rápido y barato. Las reglas son sencillas e informales. Usted es el Demandado - la persona que se está demandando. La persona que lo está demandando es el Demandante.

¿Necesito un abogado?

Puede hablar con un abogado antes o después del caso. Pero *no puede* tener a un abogado que lo represente ante la corte (a menos que se trate de una apelación de un caso de reclamos menores).

¿Cómo me preparo para ir a la corte?

No tiene que presentar ningunos papeles antes del juicio, a menos que piense que ésta es la corte equivocada para su caso. Pero lleve al juicio cualquier testigos, recibos, y cualquier pruebas que apoyan su caso. Y lea "Esté preparado para su juicio" en:

www.courts.ca.gov/reclamosmenores/preparesse.

¿Qué hago si necesito una adaptación?

Si tiene una discapacidad o tiene impedimentos de audición, llene el formulario MC-410, *Request for Accommodations*. Entregue el formulario al secretario de la corte o al Coordinador de Acceso/ADA de su corte.

¿Qué pasa si no hablo inglés bien?

Traiga a un adulto que no sea testigo para que le sirva de intérprete. O pida al secretario de la corte que le asigne uno. Si quiere que la corte le asigne un intérprete, lo tiene que pedir como mínimo menos cinco días antes de la fecha en que tenga que ir a la corte. Es posible que no haya disponible un intérprete proporcionado por la corte o que tenga que pagar una cuota por emplear un intérprete de la corte, a menos que tenga una exención de cuotas. Puede pedir a la corte una lista de intérpretes y la Solicitud de exención de cuotas y costos de la corte (formulario FW-001).

¿Dónde puedo obtener los formularios de la corte que necesito?

Vaya a cualquier edificio de la corte, la biblioteca legal de su condado, o imprima los formularios en: www.courts.ca.gov/smallclaims/forms (página está en inglés).

¿Qué pasa en el juicio?

El juez escuchará a ambas partes. El juez puede tomar su decisión durante la audiencia o enviársela por correo después.

¿Qué pasa si pierdo el caso?

Si pierde, puede apelar. Tendrá que pagar una cuota. (El Demandante no puede apelar su propio reclamo.)

- Si estuvo presente en el juicio, llene el formulario SC-140, *Aviso de apelación*. Tiene que presentarlo dentro de 30 días después de la decisión del juez.
- Si no estuvo en el juicio, llene y presente el formulario SC-135, *Aviso de petición para anular el fallo y Declaración* para pedirle al juez que anule el fallo (decisión). Si la corte no le otorga un nuevo juicio, tiene 10 días para apelar la decisión. Presente el formulario SC-140.

Para obtener más información sobre las apelaciones, vea: www.courts.ca.gov/reclamosmenores/apelaciones.

¿Tengo otras opciones?

Si. Si lo están demandando, puede:

- **Resolver su caso antes del juicio.** Si usted y el Demandante se ponen de acuerdo en resolver el caso, ambos tienen que notificar a la corte. Pídale al Asesor de Reclamos Menores que lo ayude.
- **Probar que es la corte equivocada.** Envíe una carta a la corte antes del juicio explicando por qué cree que es la corte equivocada. Pídale a la corte que despida el reclamo. Tiene que entregar (dar) una copia de su carta (por correo o en persona) a todas las partes. (Su carta a la corte tiene que decir que hizo la entrega.)
- **Ir al juicio y tratar de ganar el caso.** Lleve testigos, recibos y cualquier prueba que necesite para probar su caso. Para asegurarse que los testigos vayan al juicio, llene el formulario SC-107, y el secretario emitirá una orden de comparecencia ordenándoles que se presenten.
- **Demandar a la persona que lo demandó.** Presente el formulario SC-120, *Reclamo del demandado*. Hay fechas límite estrictas que debe seguir.
- **Aceptar el reclamo del Demandante y pagar el dinero.** O, si no puede pagar en ese momento, vaya al juicio y diga que quiere hacer los pagos.
- **No ir al juicio y aceptar el fallo por falta de comparecencia.** Si no llega a un acuerdo con el Demandante y no va al juicio (fallo por falta de comparecencia), el juez le puede otorgar al Demandante lo que está reclamando más los costos de la corte. En ese caso, el Demandante legalmente puede tomar su dinero, su sueldo o sus bienes para cobrar el fallo.

¿Qué hago si necesito más tiempo?

Puede cambiar la fecha del juicio si:

- No puede ir a la corte en la fecha programada (tendrá que pagar una cuota para aplazar el juicio) o
- No le entregaron los documentos legalmente (no recibió la orden para ir a la corte) por lo menos 15 días antes del juicio (ó 20 días si vive fuera del condado) o
- Necesita más tiempo para conseguir intérprete. (Se permite un solo aplazamiento sin tener que pagar cuota para aplazar el juicio).

Pregúntele al secretario de reclamos menores sobre las reglas y las cuotas para aplazar un juicio. O llene el formulario SC-150 (o escriba una carta) y envíelo antes del plazo a la corte y a todas las otras personas que figuran en sus papeles de la corte. Adjunte un cheque para pagar los costos de la corte, a menos que le hayan dado una exención.



¿Necesita ayuda? El Asesor de Reclamos Menores de su condado le puede ayudar sin cargo.

O vea "Información por condado" en:

www.courts.ca.gov/reclamosmenores/asesores.

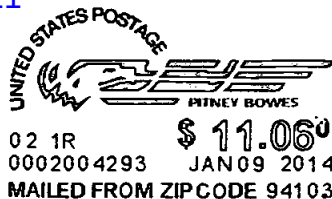
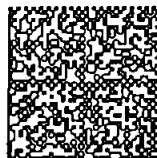
*Excepciones: Existen diferentes límites en un reclamo contra un garante. (Vea el Código de Procedimiento Civil, sección 116.220 (c).) En un caso presentado por una persona natural por daños debido a lesiones físicas en un accidente automovilístico, existe un límite de \$7,500 si el demandado tiene cobertura bajo una póliza de seguro de vehículo que incluye la obligación de defender. (Vea el Código de Procedimiento Civil, sección 116.221.)

Superior Court of California
County of San Francisco
Small Claims Division
400 McAllister Street, Room 103
San Francisco, CA 94102-4514

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7011 3500 0002 6835 3017



**RESTRICTED DELIVERY
&
RETURNED RECEIPT**

Capital One, National Association
2710 Gateway Oaks, Drive
Sacramento, CA 95833

9583333505

